IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28/07/2003

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THE HONOURABLE MR.JUSTICE M. CHOCKALINGAM

CRL. APPEAL NO.1545 OF 2002

Jayaraj .. Appellant

-Vs-

State
by the Assistant Superintendent
of Police,
Munneerpallam Police Station,
Tirunelveli District
Cr. No.271 of 2000 .. Respondent

This Criminal appeal is preferred under Section 374 of Cr.P.C. against the conviction and sentence imposed by the learned III Additional District & Sessions Judge, Tirunelveli made in S.C.No.110 of 2001 dated 8.10.2002.

For Appellant : Mr.S.Velusamy

For Respondent : Mr.O.Srinath
Govt. Advocate (Crl. Side)

:JUDGMENT

The sole accused, who stood charged, tried under Section 366 I.P.C. and Section 3(2)(v) of SC and ST Act and found guilty under Section 3 66 IPC and sentenced to undergo RI for three years along with a fine of Rs.1000/- in default to undergo six months RI and acquitted for the offence under Section 3(2)(v) of SC & ST Act, has brought forth this appeal.

2. The short facts necessary for the disposal of this appeal can be stated thus:

a) P.W.1 Adaikalam, who is belonged to Arunthathiyar community, was a resident of Gopalasamudaram. She was working as Sweeper in a School. P.W.2 Saraswathi was the daughter of P.W.1. P.W.3 Doss, P.W.4 Mariammal, P.W.5 Parvathy, P.W.6 Sundaresan, P.W.7 Kannan and P.W.8 Rani were the resident of Gopalasamudaram. The accused/appellant was running a tea stall. P.W.1 came to know about the relationship of the accused with P.W.2 and she warned her daughter. P.W.1 was making arrangement to conduct the marriage of P.W.2. On 20.9.2000, P.W.1 advised her daughter P.W.2 to come early after her work was over. On that day at about 12.00 noon, the relative of bridegroom came to the

house of P.W.1. They were waiting till 1.30 p.m., but P.W.2 did not come back from the place of her employment. PW1 went in search of PW2 and she was informed that she left the place long back after settling the account. P.W.1 accompanied by her sister came to the police station and gave a complaint under Ex.P.1. P.W.3 informed P.W.1 that accused was carrying P.W.2 in his bicycle.

b) P.W.16 Chinnasamy Inspector of Police, Munneerpallam Police station, on the strength of the complaint under Ex.P.1, registered a case in Crime No.271 of 2000 under Section 366 I.P.C. Printed F.I.R. Under Ex.P.19 was despatched to the concerned Court. P.W.16 took up investigation, proceeded to the site of occurrence and prepared observation mahazar under Ex.P.2, which was attested by P.W.7 Kannan and one Velu and Ex.P.20 rough sketch. The Investigating Officer examined the witnesses, namely PW1, PW3 to PW7 and recorded their statements.

c) The accused was arrested on 23.9.2000 by PW15 Karunanithi, Sub Inspector of Police. P.W.15 produced the accused and P.W.2 before the Court and the accused was examined by P.W.16. P.W.10 Doctor Sriramkumar, who is working as Assistant Professor at Tirunelveli Government Medical College Hospital, on receipt of intimation from the Head Constable, enquired P.W.2. She informed that she was having relationship with one person for the past five years and on 20.9.2000 she went along with the accused. She further informed to the Doctor that for the past six months she was not having menstrual cycle; and that on 20.9.2000 the accused married her and also had sexual intercourse. P.W.10 has taken samples from vaginal part and sent the same for chemical analysis. Scan was also taken and it was found that P.W.2 was in the stage of 21 weeks pregnancy. P.W.10, after making necessary medical test, has issued certificates under Exs.P.6 and P.7. The chemical report was marked as Ex.P.8.

d) The accused was also subjected to medical test by P.W.11 Dr. Adhimoolam. P.W.11 examined the accused, issued certificate as to the state of mind and body condition and certified that he was fit for sexual intercourse. Ex.P.11 was the certificate. The blood group certificate was marked as Ex.P.12. P.W.16 Inspector of Police came to Arunthathiyar colony on 24.9.2000 and he examined the witnesses. He examined the Head Master of Gopalasamudaram Pannai Venkatarama Iyer High School. He obtained the community certificate from P.W.13 Nallasivam, the Tahsildar Ambasamudaram. The said certificate was marked as Ex.P.15, wherein it was certified that P.W.2 belongs to Hindu Arunthathiyar community. P.W.17 Zonal Deputy Tahsildar, Ambasamudaram issued Ex.P.2 2 certificate to the effect that the accused belongs to Hindu Maravar community. On coming to know that P.W.2 belongs to scheduled casts, the case was altered to Section 366 IPC along with Section 3(2)(v) of SC and ST Act. The special report Ex.P.21 was despatched to the concerned court. The entire records have been forwarded to P.W.18, Arun, Deputy Superintendent of Police for further investigation. P.W18 examined the other witnesses, completed the investigation and filed a charge sheet on 4.1.2001.

3. In order to prove the charges levelled against the accused/ appellant, the prosecution examined 18 witnesses and marked 22 exhibits. No material objects were marked. On completion of the evidence on the side of the prosecution, the accused was questioned under Section 31 3 of Cr.P.C. as to the incriminating circumstances found in the evidence of the prosecution

witnesses, which he flatly denied as false. No defence witness was examined. After careful consideration of the rival submissions and the scrutiny of the materials available, the trial court found the accused guilty under Section 366 I.P.C. and sentenced him to undergo imprisonment as stated above, but the accused was acquitted of the charges under Section 3(2)(v) of SC & ST Act. Hence, this appeal.

4. Arguing for the appellant, the learned counsel would submit that there was a considerable delay in making complaint; that the complaint was written by some known person of P.W.1, who was the author of the complaint; that P.W.1 has categorically deposed that she had no knowledge about the contents of the same; that in Ex.P.1 complaint, the place of occurrence was not mentioned; that P.W.2 victim has deposed that she was not forcibly taken by the appellant; that only on the request of the appellant she went along with him, and hence, it cannot be termed as kidnapping as understood by the provisions of I.P.C. It was a case where the victim voluntarily went along with the accused, and thus, no ingredients under Section 366 IPC would be attracted. It is pertinent to note that the accused and the victim had close relationship for a long time and subsequently, the accused married the victim also. The medical evidence did not support the case of the prosecution. The trial court having acquitted the accused under Section 3 (2)(v) of SC & ST Act, should have acquitted him under Section 366 of IPC also. In view of number of flaws that were found in the case of prosecution and the infirm and discrepant evidence, the trial court should have acquitted the accused of the charges under Section 366 I. P.C, and hence, he is entitled for an acquittal by this Court.

5. Strongly opposing all the contentions put forth by the appellant's side, the learned Government Advocate (Criminal side) with vigour and vehemence would submit that the trial court, only on consideration of the evidence, has properly convicted the accused under Section 3 66 I.P.C; that it is true that the accused/appellant was acquitted under Section 3(2)(v) of SC & ST Act, since the same was not proved; that P.W.2 victim has categorically spoken to the fact that on the day when the relatives of bridegroom came over there to see her, she was taken by the accused with an assurance of marrying her; that the fact that the victim was being carried on by the accused in a cycle was spoken to by number of witnesses, and thus, the requisite ingredients under Section 366 IPC was clearly proved. The trial court has also correctly found the accused guilty under the said provision, and hence, the appeal has got to be dismissed.

6. On a careful consideration of the rival submissions made and the scrutiny of the materials available would lead to a conclusion that the judgment of the trial court has got to be sustained.

7. Admittedly, the appellant/accused was already known not only to the victim, but also to the close relatives, who were all examined. P.W.2 victim has categorically deposed to the fact that she had a close relationship with the accused for nearly about five years; that on the date of occurrence, the relatives of the bridegroom came over to see her; that when she was proceeding to her employment, namely rolling beedi, she was intercepted by the accused and that she was taken by the accused in his cycle with an assurance of marrying her. This fact that on the assurance of marrying her the accused took the victim in his cycle is not shaken in the cross examination, though the victim has deposed that she had close relationship with the accused for a

long number of years. It would be more appropriate to reproduce Section 366 of I.P.C.

"366. Kidnapping, abducting or including woman to compel her marriage, etc. - Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, and whoever by means of criminal intimidation as defined in this Code or of abuse of authority or any other method of compulsion, induces any woman to go from any place with intent that she may be, or knowing that it is likely, that she will be, forced or seduced to illicit intercourse with another person shall also be punishable as aforesaid."

In the instant case, there is a clear evidence to show that the appellant on the assurance of marrying the victim has induced her to move from her place to some other place. This fact has been clearly spoken to by P.W.2. Under the stated circumstances, the ingredients under Section 366 was clearly attracted in this case. The trial court was perfectly correct in finding the accused guilty under Section 366 I. P.C.

8. Coming to the question of sentence, the trial court has awarded sentence of three years RI along with a fine of Rs.1000/- in default six months RI to the accused. Taking into consideration the fact that the victim had close relationship with the accused earlier and both were living for a long time, the Court is of the view that the sentence awarded by the trial court under Section 366 IPC to the accused has got to be reduced to 18 months RI, which would meet the ends of justice. Therefore, the sentence of three years under Section 366 IPC imposed by the lower court to the accused alone is reduced to 18 months RI. In other respect, the judgment of the trial court is confirmed. The period already undergone by the accused is ordered to be set off. With the above modification, this criminal appeal is dismissed.

Index : Yes
Internet : Yes
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To
1. The III Addl. District and Sessions Judge, Tirunelveli
2. The III Addl. District and Sessions Judge, Tirunelveli
through the Principal District and Sessions Judge,
Tirunelveli
3. The Superintendent, Central Prison, Palayamkottai
4. The Public Prosecutor, High Court, Madras
5. The Dy. Inspector General of Police, Chennai-4
6. Mr.O.Srinath, Govt. Advocate (Criminal side)
High Court, Madras
7. The Asst. Superintendent of Police,
Munneerpallam Police Station, Tirunelveli District.
M.□